

A review of the Department's regulation, "Sales of Property Originating in Illinois" at 86 Ill. Adm. Code 130.605, is useful for questions regarding interstate commerce. (This is a GIL.)

April 26, 2006

Dear Xxxxx:

This letter is in response to your letter dated June 8, 2005, in which you request information. We are sorry for the delay in responding. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

We are a Minnesota company (purchaser) that frequently purchases product (for resale) from an Illinois company (Vendor). We have been arguing back and forth for several months with the IL Vendor about the occupation taxes charged on drop shipments outside of IL. The IL Vendor has charged us sales tax on these drop shipments. We do not believe this to be right.

The Vendor does not know our selling price. Therefore, they have no way of correctly calculating the sales tax – if the tax is in fact due to the state of Illinois. The Minnesota sales tax rate is different than the Illinois sales tax rate. How is the difference in sales tax reconciled between Minnesota and Illinois?

I have read and re-read Part 130 – Retailer's Occupation Tax of the Illinois Department of Regulations and have not been able to find an example or reference to this specific type of transaction. The closest item is the Interstate commerce Code 130.605. However, in searching your past inquiries, I found examples of ones very similar to ours. I have enclosed copies of two such inquiries / responses.

The Illinois Department of Revenue responded to a June 1997 inquiry and another in June of 2000 stating that the purchaser has no obligation to pay Illinois Occupation Taxes on drop shipped sales if certain criteria are met. We believe we have met these criteria.

- We do not have nexus in Illinois.
- We are purchasing for resale.
- We do possess a MN Certificate of Exemption for resale.
- We have provided this MN Certificate of Exemption to the IL Vendor.
- We are the Purchaser, our customers purchase order does not go to the IL Vendor.
- The product is dropped shipped via common carrier to a state other than MN or IL.

Please respond to these questions in writing. Is our company obligated to pay the Illinois occupation tax under the circumstance outlined above? Does the Illinois vendor have a right to charge us this occupation tax on these drop shipments?

DEPARTMENT'S RESPONSE

We think review of the Department's regulation "Sales of Property Originating in Illinois" at 86 Ill. Adm. Code 130.605 is appropriate. Be sure to review subsection 130.605(e) regarding the proper documentation for this exemption. Taking a look at other Department letters regarding interstate commerce, such as General Information Letter ST 97-0302-GIL, is also helpful.

If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Martha P. Mote
Associate Counsel

MPM:msk